

RAMIRO MORALES, SBN 167947
CHRISTINE M. FIERRO, SBN 191660
RICHARD A. EGGERTH, SBN 99625
MORALES, FIERRO & REEVES
2300 Contra Costa Blvd., Ste. 310
Pleasant Hill, California 94523
Telephone: (925) 288-1776

Attorneys for Plaintiff
HDI-GERLING AMERICA INSURANCE COMPANY

E-filing

PJH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HDI-GERLING AMERICA INSURANCE
COMPANY, a New York Corporation,

Plaintiff,
vs.

HOMESTEAD INSURANCE COMPANY,
an Pennsylvania Corporation; GREAT
AMERICAN E&S INSURANCE
COMPANY, an Ohio Corporation, formerly
known as AGRICULTURAL EXCESS AND
SURPLUS INSURANCE COMPANY, and
DOES 1-10,

Defendants.

CASE NO.

COMPLAINT FOR
DECLARATORY RELIEF AND
CONTRIBUTION
(DEMAND FOR JURY TRIAL)

BY FAX

Plaintiff, HDI-Gerling America Insurance Company ("Gerling"), alleges as follows:

JURISDICTION AND VENUE

1. At all times relevant herein, Gerling was and is an insurance company organized under and by virtue of the laws of the State of New York, authorized to conduct business as an insurer in the State of California. Gerling is a resident of and incorporated in New York and has its principal place of business in New York.

2. Gerling is informed and believes, and on that basis alleges, that Defendant Homestead Insurance Company (hereinafter "Homestead") was and is an insurance company organized under and by virtue of the laws of the State of Pennsylvania, conducting business as an insurer in the State of California. Gerling is informed and believes, and on that basis alleges, that

1 Homestead is a resident of and incorporated in Pennsylvania and has its principal place of business
2 in Pennsylvania.

3 3. Gerling is informed and believes, and on that basis alleges, that Defendant
4 Agricultural Excess and Surplus Insurance Company (hereinafter, "Agricultural") underwent a name
5 change to Great American E&S Insurance Company on or about July 27, 2000. Both entities are
6 referred to hereinafter as "Great American." Gerling is informed and believes, and on that basis
7 alleges, that Great American was and is an insurance company organized under and by virtue of the
8 laws of the State of Delaware, conducting business as an insurer in the state of California. Gerling
9 is informed and believes, and on that basis alleges, that Great American is a resident of Delaware,
10 and has its principal place of business in Ohio.

11 4. The matter in controversy between Gerling and the Defendants, exclusive of interest
12 and costs, exceeds seventy-five thousand dollars. Gerling is also seeking declaratory relief. Gerling
13 and Defendants are citizens of diverse jurisdictions. Accordingly, this matter is properly subject to
14 the jurisdiction of this Court under 28 United States Code sections 1332 and 2201.

15 5. Venue of this matter is proper in the Northern District of California under 28 United
16 States Code section 1391(a) because the events giving rise to this coverage claim transpired in the
17 Northern District.

18 GENERAL ALLEGATIONS

19 6. This insurance coverage action arises from the construction defect actions entitled
20 *Emery Bay II Associates v. Devcon Construction Incorporated, et al.*, Alameda County Superior
21 Court Case Number RG04144077 (the "Emery Bay Action"), and *Chartwell HOA, et al. v. 44 Third*
22 *Street, Ltd. LP, et al.*, Santa Clara County Superior Court Case Number 1-03-CV-814851 (the
23 "Chartwell Action") (collectively "the Underlying Actions").

24 7. At all time relevant herein, Jonce Thomas Construction Company, Inc. (hereinafter,
25 "Jonce"), was a licensed contractor in the business of building construction, whose primary place of
26 business is 3390 Seldon Court, Fremont, Alameda County, CA.

27 8. Jonce was named as a defendant in the Underlying Actions and tendered its defense
28 and indemnity to various insurance companies, including Gerling.

9. Gerling's predecessor company, Gerling America Insurance Company, issued general liability insurance, policy number 8020350GLP, effective June 30, 1995 through September 9, 1995 (hereinafter "the Gerling policy"), under which Jonce is an insured.

10. Homestead issued policy number UL-03641, effective June 30, 1994 through June 30, 1995, policy number UL-04314, effective June 30, 1995 through June 30, 1996, policy number UL-04935, effective June 30, 1996 through June 30, 1997, and policy number UL-05389, effective June 30, 1997 through June 30, 1998 (hereinafter "the Homestead Policies"), under which Jonce is an insured.

11. The Homestead Policies are excess over "underlying insurance," as that term is defined by the Homestead Policies. The Homestead Policies state:

Coverage A Excess Liability Insurance (Following Form)

Coverage A is excess insurance and follows the underlying insurance except as otherwise stated in this policy.

1. We will pay those sums the insured must legally pay as damages because of bodily injury, property damage, personal injury, or advertising injury, caused by an occurrence which occurs during the policy period of this policy in excess of the sums payable as damages in the underlying insurance or would have been payable but for the exhaustion of the applicable limit of insurance.

12. The Homestead Policies define "underlying insurance" as "the insurance policies listed in Schedule A – Schedule of Underlying Insurance Policies, including any renewals or replacements thereof which provide the underlying coverages and limits stated in Schedule A – Schedule of Underlying Insurance Policies"

13. Schedule A of Homestead policy number UL-03641 identifies commercial general liability coverage issued by "United National" as "underlying insurance."

14. Schedule A of Homestead policy number UL-04314 identifies commercial general liability coverage issued by Gerling as "underlying insurance."

15. Schedule A of Homestead policy number UL-04935 identifies commercial general liability coverage issued by "AIG" as "underlying insurance."

16. Schedule A of Homestead policy number UL-05389 identifies commercial general liability coverage issued by "American Equity" as "underlying insurance."

1 17. Commercial general liability coverage issued by United National to Jonce exhausted
2 the limits of coverage which would have otherwise been available to pay losses associated with the
3 Underlying Actions, prior to settlement of the Underlying Actions.

4 18. Commercial general liability coverage issued by AIG to Jonce exhausted the limits of
5 coverage which would have otherwise been available to pay losses associated with the Underlying
6 Actions, prior to settlement of the Underlying Actions.

7 19. Commercial general liability coverage issued by American Equity to Jonce exhausted
8 the limits of coverage which would have otherwise been available to pay losses associated with the
9 Underlying Actions, prior to settlement of the Underlying Actions.

10 20. Agricultural issued policy number UMB 2703840, effective June 30, 1998 through
11 June 30, 1999, policy number UMB 2703840-01, effective June 30, 1999 through February 6, 2000,
12 and policy number UMB 2703840-02, effective February 6, 2000 through February 6, 2001, under
13 which Jonce is an insured. Great American issued policy number UMB 2703840-03, effective
14 February 6, 2001 through February 6, 2002, under which Jonce is an insured. Collectively, all these
15 policies are referred to hereinafter as the "Great American Policies."

16 21. The Great American Policies are excess over a "Retained Limit," as that term is
17 defined in the policies. The policies state:

18 We will pay on behalf of the "Insured" those sums in excess of the "Retained Limit"
19 that the "insured" becomes legally obligated to pay by reason of liability imposed by
20 law or assumed by the "insured" under an "insured contract" because of "bodily
injury," "property damage," "personal injury," or "advertising injury" that takes place
during the Policy Period and is caused by an "occurrence" happening anywhere.

21 22. The Great American Policies define "Retained Limit" as:

22 the greater of: 1. the total amounts stated as the applicable limits of the underlying
23 policies listed in the Schedule of Underlying Insurance and the applicable limits of
any other insurance providing coverage to the "Insured" during the Policy Period; or
24 2. the amount stated in the Declarations as Self-Insured Retention as a result of any
one "occurrence" not covered by the underlying policies listed in the Schedule of
Underlying Insurance nor by any other insurance providing coverage to the "Insured"
25 during the Policy Period.

26 23. Agricultural policy number UMB 2703840 identifies commercial general liability
27 coverage issued by "New Market" in the Schedule of Underlying Insurance and states that \$10,000
28 is the amount of the Retained Limit.

1 24. Agricultural policy number UMB 2703840-01 identifies commercial general liability
2 coverage issued by "Newmarket Underwriters Insurance Company" (policy number NMG001027)
3 in the Schedule of Underlying Insurance and states that \$10,000 is the amount of the Retained
4 Limit.

5 25. Agricultural policy number UMB 2703840-02 identifies commercial general liability
6 coverage issued by "Lloyds of London" in the Schedule of Underlying Insurance and states that
7 \$10,000 is the amount of the Retained Limit.

8 26. Great American policy number UMB 2703840-03 identifies commercial general
9 liability coverage issued by "Lloyds of London" in the Schedule of Underlying Insurance and states
10 that \$10,000 is the amount of the Retained Limit.

11 27. Commercial general liability coverage issued by "New Market" and "Newmarket" to
12 Jonce exhausted the limits of coverage which would have otherwise been available to pay losses
13 associated with the Underlying Actions, prior to settlement of the Underlying Actions.

14 28. Commercial general liability coverage issued by "Lloyds of London" to Jonce
15 exhausted the limits of coverage which would have otherwise been available to pay losses
16 associated with the Underlying Actions, prior to settlement of the Underlying Actions.

17 29. Gerling is informed and believes, and on that basis alleges, that Jonce performed all
18 conditions giving rise to Homestead's obligation to defend and indemnify Jonce with regard to the
19 Underlying Actions. Alternatively, Jonce has been excused from performing any conditions giving
20 rise to Homestead's obligations under the Homestead Policies.

21 30. In the Underlying Actions, the plaintiffs alleged that various defects in the
22 construction of the dwellings caused property damage during Homestead's and Great American's
23 respective policy periods.

24 31. Gerling requested that, pursuant to the Homestead Policies, Homestead defend and
25 indemnify Jonce in the Chartwell Action.

26 32. Homestead refused to defend and indemnify Jonce in the Chartwell Action, despite
27 its obligation to do so under the Homestead Policies, solely because Homestead alleged its four
28 years of coverage was excess to the single year coverage provided under the Gerling Policy.

1 33. Prior to settlement, Homestead demanded that Gerling settle the claims against Jonce
2 in the Chartwell Action, as Homestead alleged that the claims alleged in the Chartwell Action were
3 covered under the Gerling Policy and that all Homestead coverage was excess to the coverage
4 provided by Gerling.

5 34. Due to an impending trial date and Homestead's repeated refusal to contribute
6 toward settlement, Gerling alone settled claims against Jonce in the Chartwell Action under a full
7 reservation of rights. Gerling contributed \$425,000 toward a settlement in the Chartwell Action on
8 behalf of Jonce, thereby resolving all claims against Jonce raised in that action.

9 35. Gerling requested that, pursuant to the Homestead Policies, Homestead defend and
10 indemnify Jonce in the Emery Bay Action.

11 36. Homestead refused to defend Jonce in the Emery Bay Action and contributed to the
12 settlement of the action only for amounts exceeding the remaining policy limits of the Gerling
13 Policy because Homestead alleged its four years of coverage was excess to the single year of
14 coverage provided under the Gerling policy.

15 37. Homestead demanded that Gerling contribute the remainder of the applicable limits
16 of coverage under the Gerling Policy to resolve the claims against Jonce in the Emery Bay Action.

17 38. The Emery Bay Action settled in or around September, 2006. Under a full
18 reservation of rights, Gerling agreed to contribute, on behalf of Jonce, the remainder of its
19 applicable limits under the Gerling policy in order to resolve claims against Jonce in the Emery Bay
20 Action. Accordingly, Gerling contributed \$302,842 on behalf of Jonce.

21 39. Gerling is informed and believes, and on that basis alleges, that Jonce performed all
22 conditions giving rise to Great American's obligation to defend and indemnify Jonce with regard to
23 the Underlying Actions. Alternatively, Jonce has been excused from performing any conditions
24 giving rise to Great American's obligations under the Great American Policies.

25 40. Gerling requested that, pursuant to the Great American Policies, Great American
26 defend and indemnify Jonce with regard to the Chartwell Action.

27 41. Great American refused to defend and indemnify Jonce in the Chartwell Action,
28 despite its obligation to do so under the Great American Policies, solely because Great American

1 alleged its five years of coverage was excess to the single year of coverage provided under the
2 Gerling policy.

3 42. Prior to settlement, Great American demanded that Gerling settle the claims against
4 Jonce in the Chartwell Action, as Great American alleged that the claims alleged in the Chartwell
5 Action were covered under the Gerling Policy and that the Great American coverage was excess to
6 the coverage provided by Gerling.

7 43. Due to an impending trial date and Great American's repeated refusal to contribute
8 toward settlement, Gerling alone settled claims against Jonce in the Chartwell Action under a full
9 reservation of rights. Gerling contributed \$425,000 toward a settlement in the Chartwell Action on
10 behalf of Jonce, thereby resolving all claims against Jonce raised in that action.

11 44. Gerling requested that, pursuant to the Great American Policies, Great American
12 defend and indemnify Jonce in the Emery Bay Action.

13 45. Great American refused to defend Jonce in the Emery Bay Action and contributed to
14 the settlement of the action only for amounts exceeding the remaining policy limits of the Gerling
15 policy because Great American alleged its five years of coverage was excess to the single year of
16 coverage provided under the Gerling policy.

17 46. Homestead demanded that Gerling contribute the remainder of the applicable limits
18 of coverage under the Gerling Policy to resolve the claims against Jonce in the Emery Bay Action.

19 47. The Emery Bay Action settled in or around September, 2006. Under a full
20 reservation of rights, Gerling agreed to contribute, on behalf of Jonce, the remainder of its
21 applicable limits under the Gerling policy in order to resolve claims against Jonce in the Emery Bay
22 Action. Accordingly, Gerling contributed \$302,842 on behalf of Jonce. Great American demanded
23 Gerling contribute the remainder of the applicable limits of coverage under the Gerling Policy to
24 resolve the claims against Jonce in the Emery Bay Action.

25 48. The Underlying Actions settled in late 2006, and Gerling defended Jonce and
26 indemnified Jonce for sums in relation to the settlement of the Underlying Actions, subject to a
27 reservation of rights.

28 49. Homestead had an obligation to defend and indemnify Jonce in the Underlying

1 Actions pursuant to the Homestead Policies.

2 50. Great American had an obligation to defend and indemnify Jonce in the Underlying
3 Actions pursuant to the Great American Policies.

4 **INTRADISTRICT ASSIGNMENT**

5 51. Gerling incorporates paragraphs 1-50 as though fully set forth herein.

6 52. Pursuant to Northern District Local Rule 3-5, Gerling asserts the following bases for
7 assignment of this case to the Oakland Division in Alameda County.

8 53. The insured in the insurance contracts at issue in this action, Jonce Thomas
9 Construction Company, has a mailing address and primary place of business in Alameda County.
10 Gerling is informed and believes that all of the insurance contracts at issue in this action were issued
11 to Jonce in Alameda County. And one of the two Underlying Actions, the Emery Bay Action, was
12 venued in Alameda County Superior Court, and the acts, transactions and occurrences relating to
13 that action arose in Alameda County.

14 **FIRST CAUSE OF ACTION**
15 **DECLARATORY RELIEF**
16 **(Against HOMESTEAD)**

17 54. Gerling incorporates paragraphs 1 through 53 as though fully set forth herein.

18 55. Gerling contends that, pursuant to the terms, conditions, and endorsements of the
19 Homestead Policies, Homestead had an obligation to defend and indemnify Jonce in the Underlying
20 Actions.

21 56. Gerling contends that, given Homestead's obligations to Jonce, Homestead has a
22 duty to reimburse Gerling for the sums Gerling has already incurred in providing Jonce with a
23 defense and indemnity with regard to the Underlying Actions.

24 57. Gerling is informed and believes, and on that basis alleges, that Homestead denies
25 that it had a duty to defend Jonce in the Underlying Actions, denies that it had a duty to indemnify
26 Jonce in the Chartwell Action and denies that it had a duty to indemnify Jonce in the Emery Bay
27 Action except to the extent that the amount required to indemnify the loss exceeded the limits of the
28 Gerling Policy. Homestead believes it owes no duty to reimburse Gerling for sums Gerling has
incurred in defending and indemnifying Jonce with regard to the Underlying Actions.

1 58. An actual, present and justiciable controversy has therefore arisen and now exists
2 between Gerling and Homestead concerning the parties' respective rights, duties, and obligations as
3 to the defense and indemnification of Jonce with regard to the Underlying Actions.

4 59. A judicial determination of this controversy is necessary and appropriate in order for
5 the parties to ascertain their rights, duties and obligations.

6 WHEREFORE, Gerling prays for judgment as hereinafter set forth.

7 **SECOND CAUSE OF ACTION**
8 **DECLARATORY RELIEF**
 (Against GREAT AMERICAN)

9 60. Gerling incorporates paragraphs 1 through 59 as though fully set forth herein.

10 61. Gerling contends that, pursuant to the terms, conditions, and endorsements of the
11 Great American Policies, Great American had an obligation to defend and indemnify Jonce in
12 connection with the Underlying Actions.

13 62. Gerling contends that, given Great American's obligations to Jonce, Great American
14 has a duty to reimburse Gerling for the sums Gerling has already incurred in providing Jonce with a
15 defense and indemnity with regard to the Underlying Actions.

16 63. Gerling is informed and believes, and on that basis alleges, that Great American
17 denies that it had a duty to defend Jonce in the Underlying Actions, denies that it had a duty to
18 indemnify Jonce in the Chartwell Action and denies that it had a duty to indemnify Jonce in the
19 Emery Bay Action except to the extent that the amount required to indemnify the loss exceeded the
20 limits of the Gerling Policy. Great American believes it owes no duty to reimburse Gerling for sums
21 Gerling has incurred in defending and indemnifying Jonce with regard to the Underlying Actions.

22 64. An actual, present and justiciable controversy has therefore arisen and now exists
23 between Gerling and Great American concerning the parties' respective rights, duties, and
24 obligations as to the defense and indemnification of Jonce with regard to the Underlying Actions.

25 65. A judicial determination of this controversy is necessary and appropriate in order for
26 the parties to ascertain their rights, duties and obligations.

27 WHEREFORE, Gerling prays for judgment as hereinafter set forth.
28

**THIRD CAUSE OF ACTION
CONTRIBUTION
(Against HOMESTEAD)**

66. Gerling incorporates paragraph 1 through 65 as though fully set forth herein.

67. Under the Homestead policies, Homestead owed Jonce a duty to defend and indemnify it with regard to the Underlying Actions. In light of this duty, Homestead owes an equitable duty to contribute to those sums Gerling incurred in defending and indemnifying Jonce with regard to the Underlying Actions.

68. Homestead breached its duty to defend and indemnify Jonce by failing to contribute its equitable share toward the defense and indemnity of Jonce with regard to the Underlying Actions.

69. As a result of the conduct of Homestead, Gerling was forced to incur sums in excess of its equitable share, all in excess of the jurisdictional limit of this Court.

WHEREFORE, Gerling prays for judgment as hereinafter set forth.

**FOURTH CAUSE OF ACTION
CONTRIBUTION
(Against GREAT AMERICAN)**

70. Gerling incorporates paragraph 1 through 69 as though fully set forth herein.

71. Under the Great American policies, Great American owed Jonce a duty to defend and indemnify it with regard to the Underlying Actions. In light of this duty, Great American owes an equitable duty to contribute to those sums Gerling incurred in defending and indemnifying Jonce with regard to the Underlying Actions.

72. Great American breached its duty to defend and indemnify Jonce by failing to contribute its equitable share toward the defense and indemnity of Jonce with regard to the Underlying Actions.

73. As a result of the conduct of Great American, Gerling was forced to incur sums in excess of its equitable share, all in excess of the jurisdictional limit of this Court.

WHEREFORE, Gerling prays for judgment as hereinafter set forth.

PRAYER FOR RELIEF

Gerling requests trial by jury, pursuant to Fed. R. Civ. P. 38(b). In addition, Gerling requests:

As to the First Cause of Action for Declaratory Relief (Against Homestead):

1. For a declaration and determination that Homestead owed a duty to defend Jonce in the Underlying Actions;
2. For a declaration and determination that Homestead owed a duty to indemnify Jonce in the Chartwell Action;
3. For a declaration and determination that Homestead owed a duty to indemnify Jonce in the Emerybay Action prior to exhaustion of the Gerling policy;
4. For a declaration that Homestead owes a duty to reimburse Gerling for sums Gerling incurred in defending and indemnifying Jonce with regard to the Underlying Actions;
5. For all other relief the Court deems just and proper.

As to the Second Cause of Action for Declaratory Relief (Against Great American):

1. For a declaration and determination that Great American owed a duty to defend Jonce in the Underlying Actions;
2. For a declaration and determination that Great American owed a duty to indemnify Jonce in the Chartwell Action;
3. For a declaration and determination that Great American owed a duty to indemnify Jonce in the Emerybay Action prior to exhaustion of the Gerling policy;
4. For a declaration that Great American owes a duty to reimburse Gerling for sums Gerling incurred in defending and indemnifying Jonce with regard to the Underlying Actions;
5. For all other relief the Court deems just and proper.

As to the Third Cause of Action for Contribution (Against Homestead):

1. For compensatory damages in excess of \$75,000 according to proof at trial;
2. For an award of attorney's fees and costs; and
3. For all other relief the Court deems just and proper.

As to the Fourth Cause of Action for Contribution (Against Great American):

1. For compensatory damages in excess of \$75,000 according to proof at trial;
2. For an award of attorney's fees and costs; and
3. For all other relief the Court deems just and proper.

Dated: March 28, 2008

MORALES, FIERRO & REEVES

By: 

Christine M. Fierro
Attorneys for Plaintiff
HDI-GERLING AMERICA INSURANCE
COMPANY

S:\DOCS\GA5105\CMP070403.CMF.wpd

JS 44 (Rev. 12/07) (cand rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

Gerling America Insurance Company

DEFENDANTS

Homestead Insurance Company, Great American E&S Insurance Company, f/k/a Agricultural Excess and Surplus Insurance Company

(b) County of Residence of First Listed Plaintiff Los Angeles County
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

Christine M. Fierro, Bar #191660; (925) 288-1776
Morales, Fierro & Reeves
2300 Contra Costa Blvd., Suite 310
Pleasant Hill, CA 94523**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------------------------------|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	Med. Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 365 Personal Injury — Product Liability	<input type="checkbox"/> 630 Liquor Laws	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	PERSONAL PROPERTY	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	LABOR	SOCIAL SECURITY	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		PRISONER PETITIONS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	Habeas Corpus:	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 530 General	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 550 Civil Rights	IMMIGRATION		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened
- Transferred from ☐ 5 another district (specify) ☐ 6 Multidistrict Litigation
- Appeal to District ☐ 7 Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. sections 1332 and 2201

Brief description of cause:

Insurance contribution and declaratory relief

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

March __, 2008